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Docket 97-250

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of	)	CC 97-250
	)	
MCI Emergency Petition for Prescription	)	CCB/CPD 98-12
	)	
Tariffs Implementing Access Reform	)	

OPPOSITION OF GTE

GTE Service Corporation on behalf of its affiliated companies

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March 18, 1998

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SUMMARY

GTE responds to another in a seemingly endless succession of requests that the Commission act immediately to adopt a prescriptive approach for access charges for Incumbent Local Exchange Carriers ("ILECs") and to require ILECs to recover Presubscribed Interexchange Carrier Charges ("PICCs") directly from the end user. While GTE believes that there is more the Commission can do to move towards true access reform -- removing the implicit subsidies, creating a sustainable infrastructure of explicit subsidies, as required by the 1996 Telecommunications Act and allowing LECs pricing flexibility to compete in competitive markets – a prescriptive approach, as advocated by MCI, with the burdens of preparing, analyzing, and reviewing cost studies and re-initialization proceedings will not accomplish the Commission's reform goals. The Commission should move to resolve these pending reform issues and allow the competitive market to prevail.

GTE agrees with MCI that the Commission should eliminate the distinctions between primary and non-primary residential lines. Since distinguishing between primary and non-primary lines produces no benefit remotely commensurate with its costs, the Commission should immediately move to eliminate this arbitrary distinction. Many of the remaining arguments presented by MCI involve administrative and operational problems caused by implementing new mechanisms established in the Access Reform proceeding.

Implementation issues should be addressed and resolved by the LECs and their customers and do not require Commission intervention.

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OPPOSITION OF GTE

GTE Service Corporation, on behalf of its affiliated domestic local exchange and interexchange telephone companies[1] (collectively "GTE"), respectfully submits this Opposition to the MCI Emergency Petition for Prescription ("Petition") filed on February 24, 1998 and placed on Public Notice February 16, 1998. In the Petition, MCI asks the Commission to immediately lower access rates to forward-looking economic cost and to require LECs to recover Presubscribed Interexchange Carrier Charges ("PICCs") directly from the end user under the guise that the underlying assumptions of the Commission's *Access Reform* proceeding have not been achieved and because

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1 These companies include: GTE Alaska, Incorporated; GTE Arkansas Incorporated; GTE California Incorporated; GTE Florida Incorporated; GTE Hawaiian Telephone Company Incorporated; The Micronesian Telecommunications Corporation, GTE Midwest Incorporated; GTE North Incorporated; GTE Northwest Incorporated; GTE South Incorporated; GTE Southwest Incorporated; Contel of Minnesota, Inc.; and Contel of the South, Inc.; GTE Communications Corporation.

of implementation problems, the policies adopted in that proceeding are not working.

I. An Immediate Prescription of Access Rates, Terms and Conditions, as Advocated by MCI, is Unwarranted and Would Move Access Reform in the Wrong Direction.

MCI's request for relief is both procedurally and substantively deficient. Procedurally, MCI's Petition is an untimely filed request for reconsideration of the policies adopted in the *Access Reform* Order. If MCI believes the Commission should now change those access policies, it should file a petition for rulemaking. Moreover, if MCI's objections are directed to the previously-filed tariffs implementing access reform, MCI should file its objections within the pleadings authorized in that on-going tariff investigation.

Substantively, the MCI Petition is another in a seemingly endless succession of requests that the Commission act immediately to adopt a prescriptive approach for access charges for Incumbent Local Exchange Carriers ("ILECs"). MCI again advocates imposing forward-looking economic cost access rates. GTE has already responded to these arguments:

- Nothing in the Act requires forward-looking economic costs to be the basis for access charges.[2]
- The Commission correctly anticipated a reasonable time frame from which meaningful competition will emerge.[3]
- There is ample evidence that competition is developing in dramatic ways contrary to misleading assertions by MCI.[4]

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2 47 U.S.C. §201 *et seq.*

3 *Access Reform Order* at ¶¶262-284.

- The Eighth Circuit decisions on unbundled network elements ("UNEs") are entirely proper and do not justify MCI's claims that competition is unlikely in the foreseeable future.

- Notwithstanding the reversal of the interconnection pricing rules, most states have adopted forward-looking economic cost formulas to set prices for UNEs.

- The contribution from interstate access charges provides implicit support for universal service. GTE estimates that the amount of implicit support provided by interstate access is currently $6.3 billion per year. Rather than simply eliminate this flow of support, as MCI suggests, the Commission should replace it with explicit support from a sufficient, competitively neutral universal service fund.

As GTE discussed in detail in response to a similar request for relief by the Consumer Federation of America ("CFA"), a prescriptive approach distorts the market for access service, and places undue burdens on ILECs and regulators.[5]

Even though the *Access Reform* Order set a course that seeks to reduce and potentially eliminate regulation in favor of market-based constraints, the Commission has not completed the job. There is still much work to be done in establishing a sustainable universal service fund and providing ILECs with a realistic solution to historical cost recovery and depreciation. The Commission must move quickly to remove the implicit subsidies and to create a sustainable infrastructure of explicit subsidies, as required by the 1996 Telecommunications Act. Finally, to allow LECs to compete in competitive markets, the Commission should resolve the pending rulemaking for LEC pricing flexibility.

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4 *See, e.g.*, NERA White Paper, GTE Reply Comments to CFA Petition.

Until these issues are resolved, access charges will not reflect cost. Imposing a prescriptive approach with the burdens of preparing, analyzing, and reviewing cost studies and re-initialization proceedings will not accomplish the Commission's goals. Rather than looking for a more prescriptive approach the Commission should move to resolve these pending reform issues and allow the competitive market to prevail.

Many of the remaining arguments presented by MCI involve administrative and operational problems caused by implementing new mechanisms established in the Access Reform proceeding. While GTE agrees that many of these difficulties could be avoided by abolishing the arbitrary distinction between primary and secondary lines, other matters are implementation issues which are being addressed and resolved by the LECs and their customers and do not require Commission intervention.

II. GTE Agrees With MCI That the Commission Should Eliminate the Distinctions Between Primary and Non-Primary Residential Lines.

In its Comments and Reply Comments filed in the pending rulemaking ("NPRM") defining Primary Lines,[6] GTE cautioned the Commission that the wholly arbitrary distinction between primary and secondary lines is replete with uncertainty, confusion and potential abuse. The record in that proceeding amply demonstrates problems with all of the proposed definitions. Without exception,

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[5] GTE Comments to CFA Petition at 2.

[6] Defining Primary Lines, Notice of Proposed Rulemaking, CC Docket 97-181, FCC 97- 316, released, Sept. 5, 1997.

each attempt to define a primary residence line in some way places the ILEC in the patently absurd position of trying to define such things as a customer's lifestyle, living arrangement or social relationship.

The Commission's failure to resolve the NPRM prior to the access reform tariff filings only compounded the problem. Instead of establishing a specific definition, the Commission directed the ILECs to choose between two definitions be considered in the proceeding. Not surprisingly, some ILECs chose one definition and other ILECS chose the other. The result is a complete lack of consistency for IXCs, ILECs, and customers. Even if one is to accept the dubious notion that there is a legitimate distinction between a primary residence line and a non-primary residence line -- and GTE maintains such a distinction is strictly arbitrary and meaningless -- the current situation whereby entire regions of the country are being administered in completely different ways is confusing. In the ultimate irony, ILECs are now forced to justify their primary and non-primary line counts to the Commission in their Direct Cases even though there are no rules to follow.

It is anticipated that the Commission will release an order defining primary lines in time for the 1999 tariff filings. Whatever definition is finally chosen, however, the issues raised by MCI will not go away because of the artificial nature of the distinction between primary and secondary lines. IXCs will continue to question ILECs about the number of non-primary lines reported. IXCs will continue to complain that there is no way to verify the accuracy of their PICC bills. ILECs will continue spend millions of dollars answering IXC questions, for which no answer will be acceptable. ILECs will spend additional millions of dollars explaining to customers why their particular lifestyles result in one or more of their lines being classified as non-primary and subject to higher costs.

GTE agrees with MCI that distinguishing between primary and non-primary lines does not produce a benefit remotely commensurate with its costs. The Commission should immediately move to eliminate this arbitrary distinction. If the Commission were to grant this portion of MCI's Petition, many of the remaining implementation issues raised by MCI would be moot. IXCs would no longer need to be concerned with timely, verifiable, auditable line count information supporting primary and non-primary PICC charges.

The concerns raised by the artificial distinction between primary and non-primary lines extend well beyond matters of administration. Because the distinction drawn among lines is arbitrary, so too is the difference in price which results from this distinction. Non-primary lines are made to seem artificially expensive to consumers, for reasons they, quite reasonably, find difficult to understand and to accept. While no one would claim that the current prices for basic local service reflect the cost of service, the Commission does nothing to correct these price signals by introducing yet another price distortion between primary and non-primary lines. Certainly the difference in price does not reflect any difference in cost. If the Commission believes that end-users should bear a larger proportion of loop costs, then it should increase subscriber line charges accordingly. If the resulting charge is found to be unaffordable for customers in some areas, then this should be addressed through universal service support, not by artificial distinctions in how the charge is applied.[7]

Indeed, if the artificial distinction between primary and non-primary lines is applied in the context of the Commission's Federal high cost funding mechanism, the resulting rate distortion will become even more unreasonable. If a customer in a high cost area finds it difficult to accept that a non-primary line should pay an additional $1.50, the customer will be even more perplexed to discover that the primary line costs $12 per month, while the non-primary line, in the absence of universal service funding, costs $70 per month. Quite aside from the obvious problem of customer acceptance, it is simply poor policy to create such a large rate difference between two lines whose underlying costs are essentially the same. Customer's service choices, as well as their choice of carrier, will be unreasonably distorted by this entirely artificial price difference.[8]

The Commission should eliminate the distinction between primary and non-primary lines for purposes of access rate application and for the calculation of universal service support. In the event that the Commission nonetheless decides to maintain the distinction for access pricing, it should certainly not

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7 As discussed *infra*, there may be good reason to allow the SLC to vary across geographic areas to reflect differences in cost. However, the distinction between primary and non-primary lines does not reflect any cost difference.

8 Customer's choice of local carrier will be affected because it will not be possible to prevent customers from ordering primary lines from different carriers in order to escape the unreasonable difference in price that would result if more than one line is ordered from the same carrier.

extend the same distinction to universal service, where the potential size of the resulting artificial rate distortion is many times greater.

III. MCI's Claims Regarding the Timeliness and Accuracy of Line Count Information are Groundless.

If the Commission decides to continue its present policy regarding primary and non-primary lines, GTE disputes MCI's claims concerning the difficulties experienced by MCI in obtaining timely, verifiable, auditable line count information supporting PICC charges.

The Commission has already established that LECs are required to provide IXCs with customer-specific information about the number and type(s) of PICCs they are assessing for each of the IXC's presubscribed customers.[9] There is nothing in the record, nor does MCI assert, that even remotely hints that ILECs do not intend to comply with this Order.

MCI offers no documented evidence to substantiate its allegations of incompetence or malfeasance by the ILECs. MCI argues that it has been unable to load billing information from four large ILECs due to formatting errors and complains further that the detailed billing information arrives 1-3 weeks after the summary bills.[10] While it is not unexpected that some initial administrative problems would occur in providing this new information, GTE has worked with MCI and other IXCs to anticipate and resolve any difficulties. In joint meetings

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9 *Access Charge Reform*, Second Order on Reconsideration and Memorandum Order and Opinion, CC Docket Nos. 96-262, 94-1, and 91-213, FCC 97-368, released Oct. 9, 1997 at ¶16. ("Second Reconsideration Order").

between GTE and MCI personnel to coordinate billing procedures, MCI has not expressed any dissatisfaction with the process GTE has proposed.[11] Over time, and most likely within the first few iterations of the new PICC billing process, most ILECs will be fully capable of providing detailed billing records within the 30 days requested by MCI.

Finally, MCI proposes that ILECs should not be permitted to collect the PICC from the IXCs through current charges until they properly can provide the PICC billing information.[12] Again, MCI has provided no evidence to support such a harsh result other than vague claims of formatting errors and delayed detail billing for periods of one to three weeks following summary billing. MCI has not even made a showing to support a formal complaint, let alone a complete alteration of the access reform rules. In any case, absent clear abuse of the process, there is no justification for the Commission to get involved in resolving these administrative difficulties.

IV. The Commission Should Recognize That the PICC Effectively Raises the SLC Cap.

The MCI Petition, and the recent controversy over the pass-through of PICC charges, makes it abundantly clear that the adoption of the PICC will result

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10 MCI Petition at 19-20.

11 GTE Network Services personnel discussed PICC billing issues with MCI at the BOS Version 30 customer walk-through in Denver in December. At that meeting, MCI was informed that GTE would be providing PICC billing records in version 30 format and MCI did not indicate that this would be a problem.

12 MCI Petition at 22.

in a corresponding increase in the flat amount each customer pays per month. The PICC was adopted because of concerns that an increase in the current caps on SLCs, and in particular the $3.50 cap on the SLC for residence and single-line business, would adversely affect the affordability of basic service. Yet if the IXC to whom the PICC is assessed passes the charge through to its end -user -- as the IXC is clearly allowed to do under the Commission's rules -- the effect to the end-user is exactly the same as if the SLC were increased by the same amount. It is now apparent that most IXCs will in fact pass the PICC through to their end-user customers. Further, if the Commission thought that increasing the flat-rate charge end-users pay through the mechanism of a PICC, rather than by a simple increase in the SLC, would somehow be more palatable to customers, the experience of the last few months has surely disproved this notion. In fact, the PICC has created new problems of customer understanding and acceptance.

If the Commission nonetheless maintains the current structure of the PICC charge, under which the PICC is a carrier access charge billed to IXCs, GTE would strongly oppose MCI's suggestion that ILECs should bill the PICC on behalf of IXCs. If the PICC is really a charge to IXCs, then ILECs should not be made responsible for recovering the pass-through of this charge from end-users. Instead, GTE urges the Commission to recognize that what it has really done, in terms of its effect on end-users, is to raise the cap on SLCs. The Commission should eliminate the PICC as a separate charge to IXCs, and raise the SLC caps by the amount of the PICC charge.

GTE would be willing to recover the amount of the PICC by billing the end-user directly -- but only in the form of an increased end-user SLC charge. With this important modification, GTE would support MCI's proposal. Adoption of this proposal would eliminate the burden of administering the PICC charges, and the confusion these charges have caused among end-users. It would not adversely affect end-users, since it would not increase the flat amount end-users will ultimately have to pay.

More generally, GTE believes that all loop costs are caused by the end-user's decision to subscribe to local service, and not by the decision to make a long-distance call. It is therefore appropriate that any loop costs assigned to the interstate jurisdiction should be recovered by flat charges to end-users, not through access charges to IXCs. There are, however, two important provisos to this: First, as interstate flat-rate charges increase, it becomes more important for them to reflect differences in loop cost. The ultimate test of whether a SLC charge is reasonable is whether it brings the total price the end-user pays (the local basic service rate plus any federal flat-rate charges) closer to the cost of local service.[13] It is vital that the Commission, as it considers further aspects of access reform, implement a structure which allows SLC charges to be

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[13] While in general allowing SLCs to reflect interstate loop costs will move closer to this goal, in many cases SLC charges are already resulting in total charges to end-users that are higher than the cost of basic service. This is true in low-cost geographic areas where loop costs may be much less than the average study area cost used for determining SLC caps today. It certainly is true for multiline business customers who must pay a $9 SLC, often in addition to a state-determined local rate that already covers all of the customer's loop cost.

geographically deaveraged within a study area to reflect differences in cost. The models now being considered by the Commission for universal service make it clear that loop costs vary dramatically by small geographic area.

Second, SLC increases should not compromise the affordability of local service. Of course, if SLC charges are deaveraged, some will fall while others rise. For customers in high cost areas, the resulting increases, if implemented, would raise legitimate concerns over the affordability of service. GTE fully recognizes these concerns, but submits that they should be addressed by providing sufficient universal service funding to offset access rates - including SLCs - in high cost areas. Concerns over affordability should not be addressed by creating phantom charges to IXCs, in the vain hope that they will somehow not be passed through to end-users; nor should they be addressed by creating new, non-cost based distinctions between multiline and single line customers, or between primary and non-primary lines.

Indeed, when the Commission shunts part of the problem of loop recovery off to a PICC charge, it actually deprives itself of the tools it would otherwise have to address any resulting concerns over affordability or customer acceptance. If the PICC is recognized for what it is -- an increase to the SLC -- the Commission retains the price cap mechanism, and its tariffing rules, to ensure that the charge paid by end-users is reasonable. When the PICC is passed on to a non-dominant IXC, the Commission has no such regulatory tools to ensure that the pass-through is reasonable. Further, if the charge is an ILEC charge to end-users, the Commission has at its disposal the universal service authority granted it under the Act to deal with any resulting effects on affordability. Since interstate long distance is not a supported service, the Commission has no such tools with which to offset charges imposed by IXCs.

V. GTE Agrees that Once an IXC Has Properly Terminated a Relationship With a Customer, it Should No Longer be Billed the PICC.

In the recent Sprint Petition, Sprint asks the Commission to establish a rule to permit IXCs to notify LECs that the IXC has terminated a toll customer for failing to pay his/her bill or for other violations of the IXC's tariff. As GTE stated in its Comments in response to the Sprint Petition, IXCs should be required to notify the customer of the impending termination of the relationship by providing the customer with a reason for the termination, an effective date and a telephone number to customer could use to contact the IXC. As long as the IXC adheres to these notification procedures, GTE does not object.

GTE, however, urges the Commission to rule expeditiously on the Sprint Petition. The Sprint proposal includes an automated notification process between the IXC and the LEC. Since GTE supports this process, GTE is anticipating making administrative and billing system changes to properly notify the customer that the PICC is being billed directly to the customer as a result of the customer not having a presubscribed interexchange carrier. The sooner the Commission decides on the Sprint Petition, the sooner GTE will know if these changes are necessary.

VI. The Date Upon Which ILECs Take a "Snap Shot" of its Records for the Purpose of Determining PICC Billing is a Matter for ILECs to Decide Based on Billing System and Service Order System Operational Concerns.

MCI asks the Commission to mandate a "snap shot" date for determining PICC counts. Once again this is an operational squabble that need not be resolved by the Commission.

Initially, MCI goes to great lengths in the Petition to deplore the lack of competition and seeks to justify its call for prescriptive rates on the basis that there is not likely to be meaningful competition in the foreseeable future. Yet, on the snap shot issue, MCI fears competition is so rampant as to necessitate standardizing the snap shot date because customers will be relocating or switching companies so frequently that MCI will be receiving multiple PICC bills for the same customer.

In fact, MCI's concerns are misplaced. Because the access reform rules prohibit ILECs from assessing access charges on CLECs that purchase UNEs, MCI must be referring to resellers as the alternative providers. Since the PICC is assessed directly on IXCs by the underlying carrier, the number of times a customer changes CLEC resellers within a billing period is irrelevant to the IXC. In the event the end user is not presubscribed to an interexchange carrier, the PICC is billed directly to the reseller.

Incumbent LECs must have the flexibility to manage their individual billing systems in a cost efficient manner. This includes the selection of the snap shot date for the purpose of billing the PICC. It would be inappropriate, and virtually impossible, for the Commission to prescribe such a date given the multitude of issues that exist concerning the vast differences in billing systems across ILECs.

MCI's concern that snap shots on different dates makes it difficult to estimate its overall PICC costs is equally frivolous. The fact that MCI began billing its National Access Fee in January, before any ILEC had provided MCI either a summary or detailed bill, suggests MCI has adequate tools to estimate its overall PICC costs. There is no merit to this proposal and the Commission should reject it.

VII. MCI's Request That ILECs Provide a Line Item Accounting for Universal Service Amounts in Their Access Bills is Unnecessarily Burdensome on ILECs and Provides No Information Not Already Available to IXCs.

MCI requests that ILECs be ordered to include a line item showing the specific amount of universal service that is passed through to IXCs in each access element.[14] The Commission's rules prescribe that universal service contributions be calculated as exogenous changes to an ILEC's price cap indices. As such, trying to associate USF contributions to specific rate elements would be useless over the long run. It is not likely that allocations to rate elements will remain static long enough for the breakout to be useful.

Notwithstanding the lack of usefulness in such an itemization, ILEC billing systems do not currently provide this level of detail. Significant and costly billing

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[14] MCI Petition at 26.

system modifications would be required to meet this request. Again, this is a request that can only be viewed as causing ILECs additional cost with no benefit.

Finally, this information is already provided by ILECs in their tariff filings and FCC Form 457 submissions. MCI has access to this information and should be fully capable of developing pricing schemes to account for ILEC universal service support without heavy-handed prescription from the Commission. MCI's request should be rejected.

Respectfully submitted,

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Certificate of Service

I, Ann D. Berkowitz, hereby certify that copies of the foregoing "Opposition of GTE" have been mailed by first class United States mail, postage prepaid, on March 18, 1998 to the following parties of record:

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